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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/551,721

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Laura Raus

P268-US

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72932

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01/26/2009

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EXAMINER

SIGLER, JAY R

ART UNIT

PAPER NUMBER

3775

MAIL DATE

DELIVERY MODE

01/26/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/551,721	<b>Applicant(s)</b> RAUS, LAURA	
	<b>Examiner</b> JAY R. SIGLER	<b>Art Unit</b> 3775	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,24,26-30,32,34,35 and 40-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,24,26-30,32,34,35 and 40-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 24, 27-30, 32, 34, 35, 40-45, 47 and 49 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bent (US 3,752,161) in view of Cristiano (US 2,625,682).

- a. Bent teaches a surgical device apt to the removal of bone, cartilaginous and the like tissues during surgery (see Abstract), comprising: a pair of side-by-side blades (20 and 22), slidably coupled so that respective distal ends thereof be closable the one against the other for the removal of a tissue fragment; propelling means 12, connected or connectible to a blade of said pair and apt to determine the sliding thereof with respect to the other of said blades; and operation means 16 for the operation of said propelling means by a user. Bent further discloses a trigger 16; propelling means are of a pneumatic type (col. 2, l. 40-46) with piston (100 or 104). Bent does not specifically teach a motion

transmission member that is a lever.

Cristiano, however, teaches a motion transmission member that is a lever 16 attached to a piston 128 and pivotally mounted to a chassis of a device in order to transfer movement from the piston to another element (col. 4, l. 46-53) and allow the piston to be oriented non-parallel to the other element (see Fig. 1). It would have been obvious to someone of ordinary skill in the art at the time of the invention to add the motion transmission member of Cristiano, i.e. a lever, to the invention of Bent in order to transfer movement from the piston to the blade and allow the piston to be oriented non-parallel to the blade.

b. Concerning claim 24, Bent further discloses a plurality of osteotomy blades removably connectible to said propelling means (see col. 2, l. 60-65).

c. Concerning claims 27-30, 32, 34, 35, 40-45, 47 and 49, Bent further discloses the blades can rotate (see col. 4, l. 65 - col. 5, l. 2); supply valve 184; air intake (70 and 74; means for adjust the closing force and, therefore, the sliding speed of the blades that comprise flow adjusting means (conical section of 184) that depend on the user's speed of handling the operation means (col. 9, l. 42-56); and means capable of preventing bone entrapment 34.

4. Claims 26 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bent (US 3,752,161) in view of Cristiano (US 2,625,682) and further in view of Vilsmeier (US 6,351,659). Bent, in view of Cristiano, fairly suggests the claimed invention but not specifically having a neuro-navigation system and means for cooperation with said system. Vilsmeier teaches a neuro-navigation system (see figure

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1) and means for cooperation with said system (21 or 22) attached to an instrument 20 in order to supply a link between the surgeon and diagnostic data (see col. 1, l. 25-30).

It would have been obvious to someone of ordinary skill in the art at the time of the invention to include a neuron-navigation system and means for cooperation with said system in the modified invention of Bent, in view of Cristiano and Vilsmeier, in order to supply a link between the surgeon and diagnostic data.

5. Claims 46 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bent (US 3,752,161) in view of Cristiano (US 2,625,682) and further in view of De Satnick et al. (US 4,848,338). Bent, in view of Cristiano, fairly suggests the claimed invention but not specifically means for inhibiting operation of said propelling means. De Satnick et al. teaches surgical instrument with means 46 for inhibiting operation of propelling means in order allow the user the option of keeping blade members (embodied by 15 and 19) closed (col. 6, l. 51-63). It would have been obvious to someone of ordinary skill in the art at the time of the invention to include means for inhibiting operation of said propelling means in the modified invention of Bent, in view of Cristiano and De Satnick et al., in order allow the user the option of keeping blade members closed.

### ***Response to Arguments***

6. Applicant's arguments with respect to the claims have been considered but, generally, are moot in view of the new ground(s) of rejection.

7. Regarding though applicant's argument as to Cristiano being non-analogous art, the examiner is asserting that Cristiano is analogous art because it is reasonably

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pertinent to the particular problem with which the applicant was concerned, i.e. transmitting motion from a piston to another element. Therefor, the passage cited by applicant is not applicable to the argument because it states “the combination of elements from **non-analogous** sources...” (emphasis added).

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JAY R. SIGLER whose telephone number is (571)270-3647. The examiner can normally be reached on Monday through Thursday from 8 AM to 4 PM (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. R. S./

Examiner, Art Unit 3775

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733